Hartley Oil Company, Inc. *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO. Case 9–CA–33372–4

September 25, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On June 3, 1998, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Hartley Oil Company, Inc., Ravenswood, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Eric J. Gill, Esq., for the General Counsel.
Mark E. Heath, *Esq*. *(Smith, Heenan & Althen*), of Charleston, West Virginia, for the Respondent.
Larry G. Abel, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried in Ripley, West Virginia, on February 13, 1997. The charge was filed against the Company, Hartley Oil Company, on December 8, 1995,[1] and the complaint was issued February 29, 1996.

About 15 minutes after Warehouse Supervisor Bruce Speece observed warehouse laborer Lee Simms wearing an OCAW union button on his hat during an organizing campaign, Speece called Simms to the office and transferred him to the rail building where he previously worked, cleaning railroad cars. Simms had been working much overtime in the warehouse.

In the rail building Simms' hours were cut to below 40 hours a week, while other employees—including a new employee hired the week before—were working overtime. In his third week there, when he complained about not being able to meet his expenses because of the reduced hours, the Company laid him off for lack of work after informing him that he could make more money from unemployment and refusing to return him to the warehouse. Overtime work continued in the rail building. One employee averaged 59 hours a week in the 2 weeks following Simms' layoff, and during the next 6 weeks, two employees averaged over 61 hours.

The primary issues are whether the Company, the Respondent (a) discriminatorily transferred Lee Simms from the warehouse to the rail building, reduced his hours of work, and laid him off because of his union activity, (b) maintained an unlawful no-solicitation rule, and (c) coercively interrogated an employee, violating Section 8(a)(1) and (3) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, repackages and warehouses plastic products at its facility in Ravenswood, West Virginia, where it annually ships goods valued over $50,000 directly outside the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Discrimination Against Lee Simms

1. Transfer from warehouse to rail building

On November 17, 1994, Lee Simms was employed to work as a laborer in the rail building, where railroad cars are washed and repaired. About February (3 months later), after dislocating his shoulder, he was assigned to the warehouse where he worked until the latter part of May. That was when his brother, who was working in the rail building, hurt his knee and was transferred to the warehouse. Simms was transferred back to the rail building. After about 2 weeks, on June 14, he cut his hand and was off work until June 20. (Tr. 11, 13, 42–43, 155; R. Exh. 1.)

After Simms returned, Vice President Phil Southall directed that he "not be allowed near" any water (for hosing down the rail cars) and Simms was again transferred to the warehouse. This time, as Simms credibly testified, Warehouse Supervisor

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We also find no merit to the Respondent's allegation of bias on the part of the judge. After full consideration of the record and the judge's decision, we perceive no evidence that the judge made prejudicial rulings or demonstrated bias against the Respondent. Nor do we find the fact that the judge resolved important factual conflicts in favor of the General Counsel's witnesses establishes bias or partiality. As the Supreme Court stated in *NLRB v. Pittsburgh Steamship Co*., 337 U.S. 656, 659 (1949), "[t]otal rejection of an opposed view cannot of itself impugn the integrity of competence of a trier of fact." Finally, we reject the Respondent's argument that bias is shown by the judge's finding that Simms requested more hours of work, or alternatively, sought a "low earnings" slip from Manager Lyons on September 20, 1995, a date for which there is no record support. The September 20 date is clearly a misprint. As elsewhere found by the judge, the discussion occurred on September 14.

[2] In adopting the judge's decision, we find it unnecessary to pass on his calculations as to the amount of overtime savings the Respondent would have achieved had it recalled Simms to the rail department in October 1995.

[1] All dates are in 1995 unless otherwise indicated.

Bruce Speece told him that he "would be staying in the warehouse because I was accident prone in the rail building." (Tr. 13, 43–45, 63–64, 68.) By his demeanor on the stand, Simms impressed me as being a truthful witness, doing his best to recall accurately what had happened.

Meanwhile the Union began an organizing drive at the Company and the adjacent Hartley Manufacturing plant. The Company held meetings for the foremen (leads) and for other supervisors, giving them TIPS training for their conduct during the union organizing campaign. (Tr. 72–74, 142–143, 145–146, 189, 198–201.)

Simms supported the Union and on Monday, August 28, began wearing an OCAW union button on his hat. When Speece saw the button, as Simms credibly testified, "[H]e looked at me and looked at my hat and closed his eyes and put down his head and shook his head." Without saying anything, Speece went back to his office. About 15 minutes later Speece called Simms in and said he was being transferred to the rail building. (Tr. 14–18, 64; G.C. Exh. 2.)

By this time Simms had been working in the warehouse about 6 months. He was qualified to do the work, and there is no indication in the evidence that his work was not satisfactory. He asked Speece why he was being moved to the rail building and Speece would not give an answer. He asked the rail foreman (Lead Anthony Derenberger) why he was transferred back, and Derenberger "wouldn't give me an answer." (Tr. 12–13, 18–20, 161, 169, 197.) (Derenberger did not testify.)

Speece, who shared an office with Warehouse Manager Douglas Moore (his superior), admitted seeing Simms "with a OCAW badge right in the middle of his hat" (Tr. 195–196).

The explanation that Moore gave for Simms' transfer was that Rail Operations Supervisor Donna Jean Carter "asked for him back." Moore further claimed that Carter said, "[S]he needed *more employees* [emphasis added]," that "we was slowing down" in the warehouse, "We usually slow down in the fall and really we was getting slow." He denied seeing Simms ever "wear any buttons or anything of that nature," but did not deny that Speece reported seeing the union button on Simms' hat about 15 minutes before the transfer. (Tr. 136–137.)

Regarding Moore's credibility, he later claimed that he just "heard rumors" of union activity at Hartley Manufacturing (where the election was held on September 30) and "I didn't know of any union, not at Hartley Oil." He admitted, however, that he attended a management meeting concerning union activity. When asked why the Company held such a meeting if there was not any union activity going on, he claimed: "I guess you have to ask the . . . one in charge of the meeting because I don't know." (Tr. 142–143, 145–146.)

Still later Moore claimed "I don't recall that I did see" warehouse employee Dean Hurst wearing a badge, but admitted that "maybe" he saw Hurst wearing one, "I don't remember," and "Yeah, he could have" worn one. (Tr. 146–147.) Moore did not appear to be a candid witness.

Particularly because of Simms' continuing weekly overtime in the warehouse before the transfer (as discussed below) and the absence of any supporting evidence of any slowdown in the warehouse, I discredit Moore's claims that work there was "slowing down" and "really" getting slow. I also discredit Moore's claim that Carter not only asked for Simms back, but also said she needed "more employees" in the rail building, where she had already hired a new employee to fill in for an ailing employee.

Carter testified that Simms returned to the rail building "Because I had a fellow [Kenny Jarrett] that started having health problems in mid-August" and "I needed someone to fill that place" (Tr. 156–157). I find that this purported reason for the transfer was a fabrication.

A company exhibit (R. Exh. 7; Tr. 112) does show that Jarrett's overtime during the first 2 weeks in August (working 56.25, and 55 hours) ended the last 2 weeks of August (when he worked 35.5 and 40 hours). During the weeks ending September 3 and 10 Jarrett worked only 16 hours (2 days) a week, and he was off from then through the week ending October 1.

I find, however, that Jarrett's illness was not the reason for Simms' transfer. The company exhibit (R. Exh. 7) further shows that before Simms' transfer, the Company had already hired a new employee, Ralph Ortagus, to fill in for Jarrett. Ortagus worked 27.5 hours during the week ending August 27, the week before Simms was transferred to the rail building on August 28, in the week ending September 3. Carter claimed on direct examination, "I'm not exactly sure" when Ortagus was hired (Tr. 157).

Regarding Carter's credibility, she admitted being aware of a union campaign at the Company, but falsely claimed (Tr. 179–180) that the management was not opposed to a union (Tr. 75–76). I discredit her claim that "No," she did not know if Simms ever engaged in any union activity (Tr. 165).

I infer that during the 15 minutes—between the time Speece observed Simms wearing a union button on his cap and the time Speece (following Moore's instructions) told Simms he was being transferred to the rail building—Speece (sharing an office with Moore) reported Simms' union activity to Moore, whereupon Moore arranged with Carter for the transfer.

In drawing this inference, I have taken into consideration the facts (a) that Speece had previously informed Simms that he would be staying in the warehouse and (b) that Carter falsely claimed that she needed Simms to fill in for the ailing rail laborer Jarrett, even though Ortagus had already been hired to fill in for him.

I have also taken into consideration the admission in the Company's March 14, 1996 answer (G.C. Exh. at 2, par. 7(a)), concerning its transfer of Simms to the rail building, that "the hours of work for the rail building were sporadic around this time period and that Mr. Simms' hours would therefore be sporadic during that time."

Under these circumstances, I find that the Company transferred Simms from his overtime warehouse job to the rail building because it knew the work there was sporadic. Within 3 weeks it was able to eliminate him from the payroll.

2. Reduction in hours of work

Simms had been permitted in the warehouse to work overtime whenever he asked for it (Tr. 69). The evidence shows that in the 7 weeks before his Monday, August 28 transfer, he worked overtime in 6 of the 7 weeks, working an average of 53.08 hours (13.08 hours overtime) a week (from a low of 45.5 hours to a high of 64.25 hours). (In the remaining week ending July 30, 4 weeks before his transfer, he worked 37.25 hours.)

Thus, in those 6 weeks, his average earnings were $200 a week (40 hours at $5 an hour), plus $98 a week in overtime pay at time and a half (13.08 hours at $7.50 an hour), totaling $298 a week (Tr. 12, 20; R. Exh. 7).

In the rail building after his August 28 transfer, Simms was not permitted to work even 40 hours a week, although others in the rail building cleaning rail cars with him were working over-

time. In his first week there, Simms was permitted to work 37.25 hours, being paid $186.25 (37.25 hours at $5 an hour)—a reduction of $111.75, or 37.5 percent, from his average $298 weekly pay. In the second week he worked 33.5 hours (paid $167.50)—a reduction of $130.50, or 43.8 percent. (Tr. 54, 62; R. Exh. 7.)

In contrast, during those 2 weeks, laborer Scott Johnson worked 50 and 40.75 hours (an average of 45.375 hours) cleaning rail cars, as compared to Simms' 37.25 and 33.5 hours (an average of 35.375 hours) (Tr. 62; R. Exh. 7). Supervisor Carter's only explanation for this disparity in the assignment of work was that the work "goes on seniority" (Tr. 158)—even though the employee with the least seniority, Ralph Ortagus, worked 49.25 and 41.75 hours (an average of 45.5 hours) (R. Exh. 7).

Carter testified that seniority in the rail building was in the following order: Derenberger (the working foreman who worked 50.5 and 48.75 hours cleaning rail cars those 2 weeks), Jarrett (who was working only 2 days a week), then Johnson, Simms, and Ortagus (Tr. 157). Yet, Carter assigned Simms fewer hours than Ortagus—assigning Simms an average of 37.375 hours those 2 weeks after his transfer to the rail building and Ortagus an average of *45.5 hours* (with 9.25 hours of overtime the first week and 1.75 hours of overtime the second week) (R. Exh. 7).

The Company was obviously discriminating against Simms in the assignment of work.

3. Simms' layoff

Simms saw the work in the rail building slowing down and asked Warehouse Supervisor Speece if there was work somewhere else in the plant. Previously when there was not enough work in the rail building, employees had been transferred to the warehouse or to the extruder building, where they "melt down" fiber and "it comes out plastic." Speece said there was no work in the warehouse and, without explanation, said that Simms "wasn't allowed" in the extruder building (evidently during the organizing campaign). (Tr. 21, 26–27, 65–67, 79–80, 118, 146.)

At 10:12 a.m. on Wednesday, September 20 (Simms' third week in the rail building), after working 3-1/4 hours that day and 20-3/4 hours that week, he was sent home for lack of work. Ortagus continued working until 3:56 p.m., for 9 hours that day. (Tr. 48; R. Exhs. 9–10.)

That evening Simms' father advised him to get a low earnings slip from the Company to enable him to draw partial unemployment compensation while working less than full time. The next morning he clocked out at 10:10 and went to Vice President Bernard Lyons' office. He asked Lyons for such a slip and explained that he could not meet his expenses because of the reduced hours. Lyons telephoned Supervisor Carter to determine how many hours would be available for Simms to work. Carter, who had already laid off Ortagus that morning, advised Lyons that there "would be little to none" for Simms and that he would be the next one laid off. (Tr. 21–24, 49–54, 67, 113–115, 127, 162–165, 174, 182–184, 204–206; G.C. Exhs. 3 at. 25–26, 6, 8; R. Exhs. 9–10.)

As Simms credibly testified, Lyons refused to give him a low earning slip and "told me that I'd be better off taking unemployment because I would make more money from unemployment than I would be working." Simms asked if there was "any work for me here to do besides being laid off" because "I couldn't afford to be laid off at that time," and "He told me no. I was better off going on unemployment . . . I said if that's the only thing I can do I said I'm going to have to do it"—consenting to the layoff. (Tr. 23, 69–70, 132, 206–207.)

Lyons laid Simms off that morning and, as Simms further credibly testified, "[T]old me if more work come in *they would call me* [emphasis added] and I gave him my name, and my address, and my phone number." I discredit Lyons' claims that there was no discussion of low earnings or of future job opportunities. (Tr. 23, 115–116, 123; R. Exh. 8.)

The Company's own exhibit (R. Exh. 7) shows a large amount of overtime in the rail building after the week when it laid Simms off.

In the first 2 weeks after the layoff, laborer Johnson work 53 and 65 hours (averaging 59 hours). In the next 6 weeks, in the weeks ending October 8 through November 12 (after laborer Jarrett returned to work), Jarrett and Johnson worked a total of 734 hours, averaging 61.166 hours a week. The average weekly overtime was 21.666 hours (61.166 total hours minus 40 straight-time hours). If the Company had recalled Simms as promised and if the work were divided equally, Jarrett, Johnson, and Simms would have averaged 40.777 hours a week (734 total hours divided by three employees divided by 6 weeks).

A recall of Simms in October would have meant a substantial saving in overtime cost.

In the 6 weeks when Jarrett and Johnson worked 734 hours, there were 254 hours of time-and-a-half overtime worked at $7.50 an hour (734 total hours minus 480 straight-time hours, 40 hours a week times 2 employees times 6 weeks). This overtime cost the Company $1905 (254 times $7.50). If Jarrett, Johnson, and Simms had worked an average of 40.777 hours those 6 weeks, with an average .777 of an hour in weekly overtime, they would have worked a total of 14 hours of overtime (.777 hour times 3 employees times 6 weeks). Those 14 hours of time-and-a-half overtime at $7.50 an hour (14 times $7.50) would have been only $105—a saving of $1800 in overtime during those 6 weeks ($1905 minus $105).

I note that in the absence of Johnson on vacation during the following week ending November 26, Jarrett worked more than a double shift. He worked 81 hours, with 41 hours of overtime that week. (R. Exh. 7.)

Simms was aware of this increased volume of work in the rail building. He had driven past the facility and had seen "a bunch of rail cars on the tracks." He called the Company about the first or second week of October and Vice President Phil Southall (Rail Supervisor Donna Jean Carter's father, who approved Carter's hirings) answered the phone. Southall said there was no work. About 1 to 3 weeks later, "I called back and I had to speak to Bo Carter and he told me that there was no work either." (Tr. 25–26, 60–61, 65–66, 178.) Neither Southall nor Bo Carter testified.

Meanwhile, the Company was hiring new employees in the warehouse. An exhibit prepared by the Company (G.C. Exh. 7) shows that the Company hired Bernard Statts and Teddy Scott on November 3 and 18 and Jason Dennis and Jehovah Casto on December 11 and 20 (Tr. 120, 153, 170, 198). None of the jobs was offered to Simms, even though (a) he had worked in the warehouse about 6 months, (b) Lyons promised that if more work came in, they would call him, and (c) he repeatedly called in, seeking work.

4. Contentions and concluding findings

The General Counsel contends in his brief (at 6) that the Company "transferred Simms upon learning of the fact that he

was trying to organize for the Union," transferred him from the warehouse to the rail building where the work was slow, and "seized upon the opportunity to lay off Simms when he attempted to seek low earnings benefits" or "more hours of work."

The Company contends in its brief (at 3), contrary to the above findings, that "[w]ork in the warehouse was slowing down and due to the illness of another employee, Mr. Simms was needed back in the rail building." It offers no explanation for assigning more work to Ortagus than to Simms, even though Ortagus had the least seniority.

Regarding Simms' layoff on September 14, the Company contends (at 3–4) that Simms "was upset by his low hours" and that Lyons passed on to him the information from Supervisor Carter that "it did not appear that work would be picking up and, if further layoffs were necessary, Mr. Simms would be the next person laid off." It contends (at 4), contrary to Simms' credited testimony, that when Simms "again stated he wanted a regular paycheck, Mr. Lyons asked Mr. Simms if he was asking for a voluntary layoff" and Simms "indicated that would be acceptable."

The Company concludes (at 6) that "[c]learly, the record establishes that any union activity by Mr. Simms was not a factor in any employment decisions involving Mr. Simms." I disagree.

The credible evidence shows that about 15 minutes after the Company discovered that Lee Simms was supporting the Union, it transferred him from the warehouse where he was working much overtime, to the rail building where the work was sporadic. It refused to inform him why he was being transferred. There was an ailing employees in the rail building, but the Company had already hired Ortagus to fill in for him.

In the rail building, as found, the Company obviously discriminated against Simms in the assignment of work. It assigned overtime work to Ortagus, the least senior employee, while not permitting Simms to work 40 hours a week.

As the work in the rail building was slowing down, the Company refused to return Simms to the warehouse, even though it had informed him before his union activity that he would be staying in the warehouse instead of returning to the rail building.

On September 14, the Company refused to give Simms a low-earnings slip and told him he would make more money from unemployment than by working there. Simms said he could not afford to be laid off at that time, but the Company insisted that he would be better off on unemployment. He then consented and the Company laid him off for lack of work, but promised to recall him when more work came in.

The Company failed to recall Simms as promised when much more work came in. It repeatedly told him there was no work when he called in seeking work, even though the other two employees in the rail building were working an average of over 61 hours a week. Despite his requests to return to the warehouse, where he had worked much overtime before he revealed his union support, the Company hired new employees instead of letting him work there.

Under these circumstances I find that the General Counsel has made a strong prima facie showing sufficient to support an inference that the Company's motivation for transferring Lee Simms from the warehouse to the rail building where the work was sporadic was to eliminate him from the payroll for engaging in protected union activity. *Wright Line*, 251 NLRB 1083 (1983).

Finding all of the Company's defenses to be lacking in merit, I find that the Company has failed to meet its burden of proof that it would have transferred Simms, reduced his hours of work, and laid him off in the absence of his protected union activity.

I therefore find that the Company discriminatorily (a) transferred Lee Simms from the warehouse to the rail building on August 28, 1995, (b) reduced his hours of work, and (c) laid him off on September 14, 1995 because of his union activity, violating Section 8(a)(3) and (1) of the Act.

B. Unlawful No-Solicitation Policy

During the union organizing campaign, the Company maintained in its employee handbook the following provision (G.C. Exh. 4 p. 16):

> No Solicitation policy
> The Company has a firm No Solicitation policy for employees and nonemployees *on company property* [emphasis added]. Solicitation for charity will be permitted only by authorization of Mr. R. P. Hartley.

The Company admits in its brief (at 9, 17) that this solicitation policy, as written, was "facially overbroad" and "facially unlawful" (prohibiting union solicitation by employees on their own time before and after work and during breaks and lunchtime), but contends that "as enforced, it was legal" (referring to solicitations for charity, school function, and similar activities). There is no evidence that it permitted union solicitations by employees "on company property" during the organizing drive when they were not working.

The Company further contends in its brief (at 10, 18) that no remedy is required because on March 1, 1996 (several months after the union campaign and after the Company's discrimination against Lee Simms for wearing a union badge on his hat), it changed the policy, referring to its revision of the unlawful provision in its employee handbook (R. Exh. 6).

Although the General Counsel does not challenge the legality of the revised provision, he points out in his brief (at 13–14, 16) that the Company has failed to prove that it has effectively repudiated the former no-solicitation policy and given assurances that in the future it will not interfere with the exercise of the employees' Section 7 rights. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

I find that by maintaining the unlawful no-solicitation policy in its employee handbook during the Union's organizing drive, the Company engaged in conduct that tended to coerce employees in the exercise of their Section 7 rights, violating Section 8(a)(1).

C. Interrogation

Patrick Flinn, one of the leads in the warehouse, credibly testified that Warehouse Supervisor "kept on asking me who all was involved in the Union and who all I thought was in the Union, and what I thought about it" (Tr. 77). The General Counsel contends in his brief (at 12, 15) that this questioning of Flinn concerning his union sympathies and that of other employees was coercive interrogation in violation of Section 8(a)(1).

Like other leads, Flinn was a working foreman. He was paid $6.25 an hour, which was $1.25 more than the warehouse laborers' $5 wage rate. He and the other leads, as part of management, were given the TIPS training for their conduct during the union organizing drive. (Tr. 73–74, 80, 137; R. Exh. 2.)

Although he had limited authority as a supervisor, the credible evidence shows that Patrick Flinn assigned and responsibly directed the warehouse laborers on his shift (Tr. 71, 82, 97–98, 137–138, 140, 148–151, 185–187). I therefore find that he was a statutory supervisor as defined in Section 2(11) of the Act.

Accordingly I find, in agreement with the Company, that the conversations he had with management regarding union activity were not prohibited by the Act and that the allegation of coercive interrogation must be dismissed.

CONCLUSIONS OF LAW

1. By discriminatorily transferring Lee Simms from the warehouse to the rail building on August 28, 1995, reducing his hours of work, and laying him off on September 14, 1995, because of his union activity, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By maintaining an unlawfully broad no-solicitation policy during the 1995 union organizing drive, the violated Section 8(a)(1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily transferred an employee from the warehouse to the rail building for the purpose of eliminating him from the payroll, then discriminatorily reduced his hours of work and laid him off, it must offer him reinstatement to the warehouse and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of the transfer to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Hartley Oil Company, Inc., Ravenswood, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Transferring, reducing working hours, laying off, or otherwise discriminating against any employee for supporting Oil, Chemical and Atomic Workers International Union, AFL–CIO or any other union.

(b) Maintaining an overly broad no-solicitation policy prohibiting employees from soliciting for a union on their own time before and after work and during breaks and lunchtime.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lee Simms full reinstatement to his former job in the warehouse or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Lee Simms whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful transfer and layoff, and within 3 days thereafter notify the employee in writing that this has been done and that the transfer and layoff will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Ravenswood, West Virginia, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT transfer, reduce your wages, lay you off, or otherwise discriminate against any of you for supporting Oil, Chemical and Atomic Workers International Union, AFL–CIO or any other union.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT maintain an overly broad no-solicitation policy prohibiting you from soliciting for a union on your own time before and after work and during breaks and lunchtime.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Lee Simms full reinstatement to his former job in the warehouse or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Lee Simms whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL , within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful transfer and layoff of Lee Simms, and WE WILL , within 3 days thereafter, notify him in writing that this has been done and that the transfer and layoff will not be used against him in any way

HARTLEY OIL COMPANY, INC.